

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

EARL L. TABRON, JR.

Plaintiff

v.

RADIOSHACK, JOHN V. ROACH,
GEORGE KUNNEY AND
DARRYL J. FERRARA

Defendants

No.: 02-CV-2695

JURY TRIAL DEMANDED

ORDER

AND NOW, this day of , 2003, upon consideration of defendant, George Kuney's Motion to Dismiss Plaintiff's Complaint for Failure to Comply With Discovery and This Court's July 24, 2003 Order, and any response thereto, it is hereby ORDERED and DECREED that said Motion is GRANTED. Plaintiff's Complaint is hereby dismissed with prejudice.

J.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

EARL L. TABRON, JR.

Plaintiff

v.

RADIOSHACK, JOHN V. ROACH,
GEORGE KUNNEY AND
DARRYL J. FERRARA

Defendants

No.: 02-CV-2695

JURY TRIAL DEMANDED

**GEORGE KUNNEY'S MOTION TO DISMISS
PLAINTIFF'S COMPLAINT FOR FAILURE TO COMPLY
WITH DISCOVERY AND THE COURT'S JULY 24, 2003 ORDER**

Defendant, George Kuney, incorrectly designated as George Kunney, through his attorneys, Bennett, Bricklin & Saltzburg, LLP, hereby move this Honorable Court for an Order dismissing plaintiff's complaint with prejudice, pursuant to Fed. R. Civ. Pro. 37(b)(2)(C) and in support thereof defendant avers as follows:

1 Plaintiff commenced the instant civil action alleging employment discrimination by filing a civil action in the Federal District Court for the Eastern District of Pennsylvania on May 6, 2002.

2. On or about April 22, 2003, counsel for the defendant served upon plaintiff's then attorney, Wendell Cooper-Porter, Interrogatories and Requests for Production of Documents directed to plaintiff pursuant to Fed. R. Civ. Pro. 33 and 34.

3. By Order dated April 30, 2003, this Honorable Court granted plaintiff's counsel's motion to withdraw from this action.

4. No other counsel has entered an appearance for plaintiff and plaintiff has not provided

self executing disclosures or responses to any of defendants' written discovery.

5. Discovery is scheduled to end on September 30, 2003.

6. On June 16, 2003, the undersigned sent a letter to plaintiff at his home address, return receipt requested, providing another copy of the written discovery requests and again requesting responses to the outstanding discovery. See Exhibit "A." There was no reply.

7. Moving defendant filed a motion to compel on June 26, 2003.

8. Co-defendants RadioShack and John V. Roach also filed motions to compel on June 27, 2003.

9. On July 24, 2003, this Honorable Court signed an Order compelling plaintiff to provide self executing disclosures and respond to defendant's written discovery requests by August 7, 2003, or risk dismissal of his Complaint. See Exhibit "B."

10. Plaintiff has failed to provide the discovery as ordered and has made no contact with the undersigned or with any of the defendants.

1. Plaintiff has not complied with the Court's Order, nor has he opposed or challenged the Order in any way.

12. Plaintiff has apparently abandoned his cause of action and defendants should not be compelled to continue to expend time and expense defending against it.

13. George Kuney will be prejudiced if plaintiff is allowed to ignore this Court's Orders and refuse to provide self executing disclosures and responses to discovery.

WHEREFORE, defendant, George Kuney, respectfully requests that this Honorable Court dismiss plaintiff's Complaint with prejudice.

BENNETT, BRICKLIN & SALTZBURG LLP

By: _____
Daniel C. Moraglia, Esquire
Attorney for Defendant, George Kuney

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

EARL L. TABRON, JR.

Plaintiff

v.

RADIOSHACK, JOHN V. ROACH,
GEORGE KUNNEY AND
DARRYL J. FERRARA

Defendants

No.: 02-CV-2695

JURY TRIAL DEMANDED

VERIFICATION

I, Daniel C. Moraglia, Esquire, hereby verify that I am attorney for defendant, George Kuney, and that the facts set forth in the foregoing Motion to Dismiss are true and correct to the best of my knowledge, information and belief. I understand that false statements herein made are subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

Daniel C. Moraglia, Esquire

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

EARL L. TABRON, JR.

Plaintiff

v.

RADIOSHACK, JOHN V. ROACH,
GEORGE KUNNEY AND
DARRYL J. FERRARA

Defendants

No.: 02-CV-2695

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I, Daniel C. Moraglia, Esquire, hereby certify that a true and correct copy of the foregoing motion to dismiss has been filed and served this date upon all interested counsel by way of United States Regular First Class Mail, postage prepaid, addressed as follows:

Mr. Earl L. Tabron, Jr.
7329 Ogontz Avenue
Philadelphia, PA 19138
Pro Se

David A. Rapuano, Esquire
Archer & Greiner, P.C.
One South Broad Street, Suite 1620
Philadelphia, PA 19107
Attorney for RadioShack

Michael W. Herbert, Esquire
22 Chambers Street
Princeton, NJ 08542
Attorney for Darryl J. Ferrara

BENNETT, BRICKLIN & SALTZBURG, LLP

BY: _____
Daniel C. Moraglia, Esquire
Attorney for Defendant, George Kuney

DATE _____

EXHIBIT “A”

BENNETT, BRICKLIN & SALTZBURG LLP

ATTORNEYS AT LAW

1601 MARKET STREET

16TH FLOOR

PHILADELPHIA, PENNSYLVANIA 19103-2393

(215) 561-4300

FAX: (215) 561-6661

WEBSITE: www.bbs-law.com

MONTGOMERY COUNTY OFFICE

ONE MONTGOMERY PLAZA

SUITE 606

NORRISTOWN, PA 19401-4807

(610) 272-4900

FAX: (610) 272-5105

NEW JERSEY OFFICE

204 WHITE HORSE PIKE

SECOND FLOOR

HADDON HEIGHTS, NJ 08035-1739

(856) 547-5756

FAX: (856) 547-5880

DELCHESTER OFFICE

109 EAST EVANS STREET

SUITE A

WEST CHESTER, PA 19380-2600

(610) 344-3990

FAX: (610) 344-3995

CENTRAL PENNSYLVANIA OFFICE

313 WEST LIBERTY STREET

SUITE 371

LANCASTER, PA 17603

(717) 393-4400

FAX: (717) 393-4322

BUCKS COUNTY/LEHIGH VALLEY

OFFICE

711 HYDE PARK

DOYLESTOWN, PA 18901

(215) 489-0815

FAX: (215) 489-0818

June 16, 2003

VIA CERTIFIED MAIL - RETURN
RECEIPT REQUESTED

WRITER'S DIRECT DIAL: (215) 665-3366

WRITER'S EMAIL: moraglia@bbs-law.com

Mr. Earl L. Tabron, Jr., Pro Se
7329 Ogontz Avenue
Philadelphia, PA 19138

Re: Earl L. Tabron, Jr.
vs. RadioShack, John V. Roach,
George Kunney And Darryl J. Ferrara
Our File No.: 90799

Dear Mr. Tabron:

On April 22, 2003, I sent to your then attorney, Windelle Cooper-Porter George Kuney's initial disclosures pursuant to Rule 26 of the Federal Rules of Civil Procedure as well as a set of interrogatories and request for production of documents directed to you which you are required to respond to pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure.

It is my understanding that Ms. Cooper-Porter is no longer your attorney. However, it is still your responsibility to provide your initial disclosures as well as responses to our written discovery. To date, we have not received your initial disclosures or responses to our discovery which are now long overdue. If we do not receive your initial disclosures and responses to written discovery by June 23, 2003, we will file a motion to compel with the court and will seek reimbursement for the cost associated with the filing of the motion. I enclose another set of our written discovery requests for your convenience.

Thank you for your attention to this matter.

Very truly yours,

DCM/rdt-Encl.

Daniel C. Moraglia

EXHIBIT “B”

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

EARL L. TABRON, JR.,

Plaintiff,

CIVIL ACTION

v.

NO. 02-2695

RADIO SHACK, JOHN V. ROACH,

GEORGE KUNNEY and

DARRYL J. FERRARA,

Defendants.

FILED JUL 24 2003

ORDER

AND NOW, this 24th day of July, 2003, upon consideration of the motion of defendant George Kuney to compel plaintiff to respond to discovery (Docket No. 15), it is hereby ORDERED as follows:

1. On or before August 7, 2003, plaintiff Earl L. Tabron, Jr. shall respond completely to defendant George Kuney's interrogatories, said defendant's request for production of documents, and provide self executing disclosures to defendant.
2. Failure to respond as directed may result in the imposition of sanctions upon application to this court which may involve dismissal of the complaint.

BY THE COURT:


RONALD L. BUCKWALTER, J.

**ENTERED
25 2003
CLERK OF COURT**